

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Glenn M. Seber

OBJECTOR: United States of America (USDA Forest Service)

CASE 76D-0132-R-2022
76D 39764-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 76D 39764-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received an objection filed by the United States of America (USDA Forest Service).

Kurtis M. Hafferman, P.E., filed information addressing the objection on April 14, 2022. The Court consolidated this Claim into Water Court Case 76D-0132-R-2022 on October 13, 2022. The Consolidation order set a filing deadline by which objector could respond to the afore-mentioned filing. Objector filed a response on October 28, 2022.

FINDINGS OF FACT

1. The United States objected to the flow rate, volume, place of use, and maximum acres of the above-captioned claim.
2. The April 14, 2022 filing includes an amendment form filled out and signed by Glenn Seber. The amendment form indicates the place of use should be:

7. **Place of Use:** County - _____ ☐ See attachment

_____ acres	_____ Lot	_____ Block	N 1/2	SW 1/4	SE 1/4	Section 28	T 33 N	R 31 W
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____

_____ **Total Acres** Subdivision _____

☒ Replaces claimed information ☐ Supplements claimed information ☐ Addendum included

3. The amendment form indicates the flow rate and volume should be:

8. Flow Rate Claimed: 127
9. Volume Claimed: 204 acre-feet per year
- ☐ cubic feet per second
☒ gallons per minute
☐ miner's inches

4. A marked-up map and abstract of Claim 76D 39764-00 attached to the amendment form indicates the place of use should be NWSWSE of Section 28, T33N, R31W.

5. The proposed flow rate and volume are based on the following calculations performed by Hafferman Engineering, Inc:

HEI reviewed the flow rate claimed for Mr. Seber's power generation system and agrees that the flow rate is incorrect and needs to be amended. HEI has calculated the flow rate using the Hazen-Williams equation based on the pipe size, the known elevation change and the other known factors of a 2-inch diameter PVC pipe. HEI has determined that the peak flow rate is 127 gpm (0.28 cfs). Mr. Seber uses the power generation system all year. Based on the period of use and flow rate HEI calculated the annual volume diverted is 204 Acre-feet. HEI has made the correction on the General Abstract and has provided the correction on the Claim Amendment Form.

6. The Court's October 13, 2022 consolidation order requested Objector review the above-referenced amendment form and indicate whether such changes would resolve the objection.

7. Objector's October 28, 2022 response indicates the proposed changes would resolve the objection so long as no other changes are made.

8. The place of use of claim 76D 39764-00 should be described as:
NWSWSE of Section 28, T28N, R31W, Lincoln County

9. The flow rate and volume of Claim 76D 39764-00 should be:
Flow Rate: 127.00 GPM
Volume: 204 AC-FT

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties may confer with each other and exchange information before the case is put on a hearing track. Parties may file settlement documents during these initial settlement proceedings. Rule 16(a), W.R.Adj.R.

3. If a Claimant agrees to reduce an element of their claim, the Court does not need to make a determination as to whether the burden of proof has been met. Rule 17(c), W.R.Adj.R.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The change to the place of use described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim.

The changes to the flow rate and volume may be made because they are reductions and are supported by evidence in the record.

2. The objection in this case is resolved.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Glenn M. Seber
PO Box 703
Libby, MT 59923

Service Via Electronic Mail:

Mark J. Widerschein, Trial Attorney
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 532-5803
mark.widerschein@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 39764-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GLENN M SEBER
PO BOX 703
LIBBY, MT 59923 0703

Priority Date: MARCH 4, 1948

Type of Historical Right: FILED

Purpose (use): POWER GENERATION

Flow Rate: 127.00 GPM

Volume: 204.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF PIPE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSE	28	33N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

PIPELINE USED TO CONVEY WATER.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSWSE	28	33N	31W	LINCOLN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

39762-00

39763-00

39764-00